## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

	)
CRAIG RESS, et al.,	)
Plaintiffs,	) Civil No. 1:19-cv-05776
v.	) Judge Rebecca R. Pallmeyer
THE DIVEHEART FOUNDATION,	)
	)
Defendant.	)
	)

## PLAINTIFF CRAIG RESS'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and the Illinois Citizen Participation Act, 735 ILCS 110/ et seq., Plaintiff/Counter-Defendant Craig Ress ("Ress") respectfully moves this Court to dismiss Defendant/Counter-Plaintiff Diveheart's Counterclaim in its entirety for failure to state a claim upon which relief can be granted. In support, Plaintiff states as follows:

- 1. Plaintiffs Craig Ress and Carl Cogdill filed a lawsuit against Defendant/Counter-Plaintiff The Diveheart Foundation ("Diveheart") asserting claims of disability discrimination under the Americans with Disabilities Act and the Illinois Human Rights Act. Rather than merely defend against these allegations, Diveheart has chosen to retaliate against Ress by filing a meritless defamation Counterclaim against him for informing his social media followers that he has filed this lawsuit.
- 2. Diveheart's Counterclaim should be dismissed with prejudice under Federal Rule 12(b)(6) and the Illinois Citizen Participation Act, 735 ILCS 110/ et seq. for the following reasons:
  - Diveheart has already acknowledged the substantial truth of the statements in its
    Amended Answer to the Amended Complaint.

- b. The challenged statements are non-actionable statements of opinion.
- Diveheart challenges statements that are not about Diveheart, nor are they defamatory.
- d. Diveheart has failed to plausibly plead the requisite level of fault for the challenged statements.
- e. Diveheart has failed to plausibly plead actual damages.
- 3. Filed simultaneously and incorporated herein is a Memorandum of Law in support of Plaintiff's Motion to Dismiss.

WHEREFORE, Plaintiff Craig Ress respectfully submits that Defendant Diveheart's Counterclaim for Defamation should be dismissed with prejudice.

DATED this 14th day of February, 2020.

Respectfully submitted,

/s/ Rachel M. Weisberg

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Counsel for Plaintiffs

## CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on February 14, 2020, a true copy of the foregoing	g was
served on counsel of record via the United States District Court's ECF system.	

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